

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1252 of 1992**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATIONAL INSURANCE CO. LTD - Appellant(s)
Versus
RAGHAVBHAI R SATHWARA & 1 - Defendant(s)

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Appearance :

MR RR MARSHALL for Appellant(s) : 1,
MR MD RANA for Defendant(s) : 1,
MR YOGESH S LAKHANI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 19/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Joint Civil Judge (S.D.), Ahmedabad(Rural) and Ex. Officio Commissioner for Workmen Compensation passed in W.C. Case No.2 of 1988 dated 06.01.1992.

2.0 The brief facts of the case are that present opponent No.1 was driving the car owned

by opponent No.2 and insured by the present appellant. On 16.05.1987, when opponent No.1 was coming from Ahmedabad to Amreli in the aforesaid car along with the father of the opponent No.2, the said car met with an accident. On account of the said accident, opponent No.1 received serious bodily injuries. The opponent No.1, therefore, send notice to the present appellant as well as to opponent No.2 to pay compensation. Since, the present appellant and opponent No.2 failed to take any action, the opponent No.1 preferred an application claiming an amount of Rs.29,400/- towards compensation and RS.14,700/- towards penalty.

2.1 In the said application, after hearing the parties, the learned Civil Judge passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has

submitted that the learned Civil Judge ought to have taken physical disability sustained by the opponent No.1 at 17 per cent of the body as a whole. He has further submitted that the learned Civil Judge has committed an error in holding the insurer is liable to pay penalty. Hence, the impugned judgment and award deserves to be quashed and set aside.

4.0 On the other hand, learned Advocate for the opponent No.1 has supported the order of the learned Civil Judge, and has, contended that the learned Civil Judge has passed the impugned judgment and award after taking into consideration all the facts and circumstances of the present case, and hence, no case is made out calling for interference of this Court.

5.0 Heard, learned Counsel for the parties and perused the documents placed on record. By passing the impugned judgment and award, learned

Civil Judge directed the appellant to pay an amount of Rs.29,400/- with interest at the rate of six per cent along with 20 per cent of the awarded amount towards penalty i.e. Rs.6,615/- with interest at the rate of six per cent.

5.1 Before proceeding with the matter it would be relevant to refer to a decision of Apex Court passed in the case of ***"Ved Prakash Garg Vs. Premi Devi and Ors."*** reported in 1998 ACJ 1 wherein the Apex Court at Para 14 and 19 observed as under,

"(14)... On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the compensation Act along with interest thereon, if any, as imposed by the commissioner, under Sections 3 and 4-A(3) (a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by section 4-A(3)(b) is concerned as that is on account of

personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

(19). As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of section 3 and section 4-A sub-section(3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the workmen's commissioner under section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be liability of the insured employer alone."

5.2 On perusal of the documents produced at Exh.33 i.e. examination of the opponent No.1, evidence of one witness Narshibhai Hardas produced at Exh.43 and evidence of Orthopedic

Surgeon Mr. Vekaria produced at Exh.57, it clearly transpires that the opponent No.1 was in employment of opponent No.2 and that he had sustained injury during the course of his duty. It may be noted that there is no dispute that the vehicle involved in the alleged accident was insured by the appellant and it covers risk of the paid driver. Therefore, I am of the opinion that the learned Civil Judge has rightly held that the opponent No.1 is entitled for compensation.

5.3 As regards the direction of the learned Civil Judge directing the appellant to pay penalty is concerned, the same is contrary to law. In view of the fact that once the notice was issued to the employer by the employee, it was incumbent on the employer-himself to satisfy the claim within one month from the date it falls due as required under Section 4-A(3)(b). In the case on hand, the appellant as well as opponent

No.2 has not denied the fact that pursuant to the accident in question, the opponent No.1 had sent them notice claiming compensation, which were received by them. Hence, in view of the settled legal position as well as the principle laid down by the apex Court in the case of "**Ved Prakash Garg Vs. Premi Devi and Ors.**"(Supra), I am of the opinion that it was the duty of the owner-employer to satisfy the claim in question, and hence, the appellant-Insurance Company cannot be said to be liable to pay penalty or interest thereon. Hence, the observation of the learned Civil Judge directing the appellant to pay penalty along with interest at the rate of six per cent requires to be reversed.

6.0 In the result, the appeal is partly allowed. The appellant will be exonerated from liability to pay 20 per cent of the awarded amount towards penalty i.e. Rs.6,615/- with interest at the rate of six per cent. The

judgment and award of the learned Joint Civil Judge (S.D.), Ahmedabad(Rural) and Ex. Officio Commissioner for Workmen Compensation passed in W.C. Case No.2 of 1988 dated 06.01.1992 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri, J.)

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